

PATENT
120301-2382.A**REMARKS**

Reconsideration and withdrawal of the rejections to the application, and consideration and entry of this paper, are respectfully requested in view of the amendments and remarks herewith, which place the application in condition for allowance or in better condition for appeal.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 11-21 are now pending. Claims 11, 13, and 15 have been amended, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims, as originally and herein presented, are and were in full compliance with the requirements of 35 U.S.C. §112. The amendments and remarks are not for the purpose of patentability within the meaning of 35 U.S.C. §§101, 102, 103 or 112.

Indeed, the scope of claims 11, 13, and 15 remains unchanged, and accordingly, there is no estoppel as to equivalents by this Amendment.

II. 35 U.S.C. §112, SECOND PARAGRAPH, REJECTIONS

Claims 13, 14, 15 and 21 were rejected under 35 U.S.C. §112, second paragraph, for allegedly being indefinite. The amendments to the claims render the rejections moot.

Consequently, reconsideration and withdrawal of the Section 112, second paragraph, rejections are respectfully requested.

III. THE ART REJECTIONS ARE OVERCOME

Claims 11, 12 and 15-20 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,720,872 to Gupta. ("Gupta"). In addition, claim 13 was rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gupta in view of Lacy et al. (US Patent No. 3,314,879). Further, claims 14 and 21 were rejected under 35 U.S.C. 103(a) as being allegedly unpatentable over Gupta in view of Lacy, further in view of Egloff (US Patent No. 1,707,349). The rejections are respectfully traversed. The cited documents, either alone or in combination fail to disclose, teach, suggest, enable, or provide the motivation for a skilled artisan to practice the instantly claimed invention. And moreover, Gupta is not prior to the instant invention.

As shown by previous submission, the present application claims priority to French Patent Application No. 96/16290, filed on December 31, 1996; and, the present invention has a December 31, 1996 effective filing date.

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Gupta issued from USSN 08/775,638, filed December 31, 1996.

Gupta is not available against the present application. The present application has an effective filing date of December 31, 1996; Gupta is not prior to the instant invention.

Gupta is cited pursuant to 35 U.S.C. 102(e). For Gupta to be available against the instant invention under 35 U.S.C. 102(e), Gupta must be before the date of invention, i.e., before the effective filing date of the instant invention. The "tie" of both Gupta and the instant invention having December 31, 1996 dates, as noted in the Final Office Action, goes to the present applicants; again, Gupta must be before—not simultaneous—with the instant invention to be "prior" art under 35 U.S.C. 102(e).

In pertinent part, Section 102 provides:

a person shall be entitled to a patent unless -

(e) the invention was described in . . . (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent . . .

(Emphasis added).

The language of the statute requires that Gupta be "before"—not simultaneous—with the instant invention.

As Gupta was not filed before the date of the instant invention (the effective filing date of December 31, 1996), Gupta cannot be prior art under 102(e).

Accordingly, reconsideration and withdrawal of the art rejections under 35 U.S.C. §§ 102(e) and 103 as to Gupta are respectfully requested.

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120301-2382.ACONCLUSION

The Amendments and remarks herein place the application in condition for allowance. Consideration and entry of this paper and early and favorable reconsideration of the application, and prompt issuance of a Notice of Allowance, are earnestly solicited.

Respectfully submitted,

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